

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0299P
Withholding Tax-Penalty
For the Period December 2006

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ISSUE

I. Tax Administration—Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer failed to remit a portion of its employee withholding tax prior to the due date for making such payments. As a result, Taxpayer was assessed a ten percent penalty for late payment of taxes.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

I. Tax Administration—Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to timely remit employee withholding taxes.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, 45 IAC 15-11-2 further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow

instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer argues that it received letters stating that the protested penalty liabilities had been satisfied by Taxpayer's payment or explanation. Taxpayer asserts that it received the current assessment *after* receiving the letters indicating that the liability in question had been satisfied.

A review of the Department's records indicates that a liability ("Liability 1") was issued on February 5, 2007. A corrected Liability 1 issued on the same date indicated a second withholding tax payment. The interest figures between the two liabilities were reduced because the interest was projected to a future date based on two disparate tax balances.

On May 2, 2007, the Department generated a second liability ("Liability 2"). Liability 2 was cancelled and never sent to Taxpayer. On the same day the Department generated a third liability ("Liability 3"), which is the subject of this protest.

On May 3, 2007, the Department issued letters with respect to Liability 1 and Liability 2 stating that the protested penalty liabilities had been satisfied by Taxpayer's payment or explanation. Liability 3 was officially issued on May 7, 2007. Taxpayer has not shown any harm due to the timing of the letters and Liability 3 and has not presented other legal or factual grounds sufficient to justify penalty waiver. However, Taxpayer has provided sufficient information to conclude that the amount of Liability 3 was erroneous and should be reduced to reflect proper application of prior payments.

FINDING

Taxpayer's protest is denied except to the extent that Taxpayer's liability is overstated in Liability 3.

JR/BK/DK—August 27, 2007